

ST 04-0240-GIL 12/22/2004 GRAPHIC ARTS MACHINERY AND EQUIPMENT EXEMPTION

Printing plates constitute exempt graphic arts equipment. See 86 Ill. Adm. Code 130.325 (This is a GIL.)

December 22, 2004

Dear Xxxxx:

This letter is in response to your letter dated July 22, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to request a formal legal opinion on the applicability of sales tax to our company, ABC. Up until June 30, 2003, ABC had not charged sales tax to our customers due to the Graphic Arts Exemption. As you know, this has been repealed as of July 1, 2003. We are writing to determine if we fall under the manufacturing exemption (Line 13 of the ST-1), or if we need to start charging our customers sales tax on purchases shipped here in Illinois.

ABC is a prepress company which supplies customers with proofs and printing plates. A customer will send in artwork in a digital format. ABC will then incorporate this artwork into specific layouts, which will be used when the design goes to press, and also adjusts color to the customer satisfaction. This is done in a series of proofs which are sent to the customer.

Once the customer approves the proof(s) ABC will then take those designs and will image printing plates which will be used by the press house to print the design. Once the design is printed, it will be fabricated and sent to the customer. Our two largest customers will then charge their customer for the printing and manufacturing of the designs. We charge the customer for the labor and materials. The materials include film, inks, plates etc.

Our customers are can manufacturers who make the metal can, aerosol can etc. and then sell it to their customers, who then fill the can with paint, deodorant, soup, or other consumer products. These customers might be COMPANIES, or other consumer brand companies. These filled cans are then sold through customer distribution channels.

The questions we have are:

- Since this touches the manufacturing process, would this be an exemption from sales tax? It could be considered an integral part of the manufacturing process since without the label, the product itself is useless.
- If not part of the manufacturing process, would this be resale? Our customers are in effect, selling the can (which includes the design and label) to COMPANIES so that should be part of the product.

If you need more information on this process, please feel free to call me.

Thank you in advance for your assistance.

The nature of the transactions you have described in your letter, including the precise role of each party, is not clear. For purposes of this General Information Letter, we have assumed that your company designs and fabricates printing plates for can manufacturers. These can manufacturers appear to have contracts with their customers to design and produce special order labels for cans. Can manufacturers sub the printing job out, it appears, to a third party printer.

As you mention in your letter, the graphic arts machinery and equipment exemption was repealed effective July 1, 2003. However, Public Act 93-840, effective September 1, reinstated this exemption. During the period of the repeal, printing plates would not qualify as exempt graphic arts machinery or equipment. On and after the date that the exemption was reinstated, printing plates generally qualify for the exemption. Persons purchasing printing plates should provide a certification documenting their exemption as provided in Section 130.325, which is the Department's regulation governing the graphic arts machinery and equipment exemption. Printing plates have never qualified as manufacturing machinery and equipment. The Department's regulation governing the manufacturing machinery and equipment exemption, see 86 Ill. Adm. Code 130.330, specifically states that manufacturing does not include graphic arts production.

When you perform prepress activities, you are considered to be a serviceman subject to the provisions of the Service Occupation Tax. Rules governing the liability of servicemen can be found at 86 Ill. Adm. Code 140. Any supplies that you use or consume in performing services are generally subject to Use Tax. Your letter does not contain sufficient information for us to provide any specific information about this aspect of your liability.

You may find a brief explanation of Service Occupation useful in understanding your liabilities. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred.

If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. See 86 Ill. Adm. Code 140.108.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. See 86 Ill. Adm. Code 140.109.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).]

Very truly yours,

Jerilynn Troxell Gorden
Deputy General Counsel – Sales & Excise Taxes

